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**By Email & Overnight Courier**

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
Commonwealth of Massachusetts  
One South Station  
Boston, MA 02110

Re: ***D.T.E. 01-34***

Dear Secretary Cottrell:

Pursuant to the memoranda of Hearing Officer Evans, WorldCom, Inc. hereby submits its comments regarding Verizon's Motion for Partial Reconsideration and/or Clarification (the "Motion") of the Department's August 9, 2001 Order (the "Order") in the above captioned proceeding. For the reasons stated herein, WorldCom opposes Verizon's attempt to insulate its September 7, 2001 Report on IntraLATA Special Access Services Supplement (the "Supplemental Special Access Report" or "Report") from review and urges the Department to reject Verizon's motion. WorldCom further encourages the Department to promptly proceed with its substantive investigation of Verizon's special access performance and procedures. In that regard, WorldCom has included with these comments a series of discovery questions (described more fully in the accompanying enclosure) designed to ascertain whether Verizon is discriminating against its "wholesale" customers (including CLECs and IXC's) by favoring its own (or its affiliates') "retail" customers with respect to the provisioning of special access and comparable services. WorldCom proposes that the Department pose these questions to Verizon regarding both its interstate and intrastate circuits within the Commonwealth as part of this investigation.

First and foremost, Verizon has presented no valid legal basis for the extreme and highly irregular relief it seeks. Litigants argue every day that evidence be excluded from a decision maker's consideration because, for instance, it is immaterial, or it constitutes hearsay, or it is unduly prejudicial, or it was illegally obtained, etc. Here, by contrast, Verizon does not seek to entirely prevent the Department from considering the Supplemental Special Access Report, but instead seeks to classify the

Report as something other than “evidence” in the hopes of shielding it from the critical review and analysis to which it would be subjected via the rigors of the discovery process. It is an unusual request, and one apparently without successful precedent given that Verizon cites none.

The linchpin for Verizon’s motion is the Department’s conclusion that it is “preempted from *investigating and regulating* quality of service for federally tariffed special access services.” Order at 9 (emphasis added). While the Department can obviously speak for itself regarding what it intended those words to mean, WorldCom respectfully submits that the most appropriate, logical and reasonable interpretation is that because the Department has concluded it is preempted from *regulating* the quality of federally tariffed special access services, it further concluded that should not investigate the quality of such services *if the purpose of the investigation is to develop regulations with respect to such services*. Here, however, the purpose of the Department’s investigation is to determine whether some regulatory action is needed with respect to state tariffed circuits, over which it clearly has authority, and its investigation of federally tariffed circuits will aid in that endeavor. By ordering Verizon to provide the Supplemental Special Access Report, the Department implicitly, and correctly, concluded that state-level investigation of federally tariffed circuits is not preempted if the purpose of the investigation is legitimately within the state’s jurisdiction, as is the case here. Indeed, it is difficult to fathom that Congress or the FCC intended to reign in states from pursuing legitimate areas of inquiry regarding the quality of services over which the states have jurisdiction.

In addition, a close look at Verizon’s federally tariffed services in Massachusetts may well lead the Department to seek the assistance of the FCC regarding Verizon’s special services performance on behalf of the businesses and economy of the Commonwealth, just as did the New York Public Service Commission earlier this year. As the Department already knows, following an investigation of Verizon’s special services performance in New York (including interstate special access circuits), New York PSC Chairman Maureen Helmer informed FCC Chairman Michael Powell that the PSC had “determined, based on the record in the proceeding, that Verizon remains the dominant provider of facilities for special services, that Verizon’s provisioning performance for special services is significantly below [the NY PSC’s] service quality standards, and that Verizon may be treating other carriers less favorably than its end users.” May 22, 2001 letter from New York PSC Chairman Maureen Helmer to FCC Chairman Michael Powell. Noting that its “ability to encourage Verizon is dependent on the Federal Communications Commission’s scrutiny regarding interstate circuits” the New York PSC offered to work with the FCC “to establish and enforce service standards on all special services, if this were a matter [the FCC] believed should reasonably be delegated to New York State.” Id. Were the Department to seek similar authority from the FCC, it presumably would need to determine, “based on the record” in this proceeding, that the delegation of such authority were needed. Yet under Verizon’s interpretation of the Order, the Department would never be able to develop a

compelling case for the delegation of authority because it has no authority to investigate whether a compelling case exists.<sup>1</sup>

Verizon's requested relief is all the more troubling because Verizon does not dispute (nor could it) the relevance of the Supplemental Special Access Report. Indeed, Verizon concedes the value of "the interstate data as a comparative tool to *inform* [the Department's] decision regarding the reasonableness of intrastate special access services." Verizon Motion at 5 (emphasis in original). Given that the Report undoubtedly constitutes "relevant evidence" as that term is commonly understood<sup>2</sup>, it is incumbent upon the Department to treat the Report as such and permit the parties to probe Verizon about it. Cf., 220 CMR 1.10 ("The Department shall follow the rules of evidence observed by courts when practicable"). Verizon's candid and forthcoming responses to appropriate discovery requests may prove valuable in unearthing additional evidence pertinent to the Department's investigation; questions with respect to Verizon's interstate circuits should be encouraged, not forbidden. This is especially the case given that, as the Department noted, Verizon's "provisioning of federal circuits is identical to its provisioning of in-state circuits." Order at 10.

The fact that the processes for provisioning intra- and interstate circuits is "identical" also works to dispatch Verizon's attempt to cloak the Report on the basis that it has already reported on its "entire customer base of intrastate special access circuits in Massachusetts." Verizon Motion at 4. Verizon's assertion misses the point. If *the process* by which intrastate circuits are provisioned is flawed, an analysis of only 100 or so circuits over a 15 month period may not reveal those flaws. By expanding the universe to analyze all of the thousands of circuits provisioned by *that process*, the chances of identifying the flaws in the process are dramatically increased. And, in fact, even a cursory review of the Report reveals flaws that demand further investigation. For instance, Attachment 4 of the Supplemental Special Access Report includes data for interLATA special access provisioning. Accepting the results at face value (which WorldCom does solely for purposes of this discussion), Verizon's performance in provisioning DS1s – the most commonly ordered circuits for WorldCom's business customers – has dramatically declined. Comparing the first six months of 2000 to the first six months of 2001 (*i.e.*, excluding data potentially impacted by the August 2000 "work stoppage" that might skew the results in a way that prejudices Verizon), Verizon's "missed orders" jumped from 7% for the first half of 2000 to 18.4% for the first half of 2001. Likewise, "Average Delay Days" increased from 7.7 days for January – June 2000 to 12.3 days for January – June 2001. (Of course, it is

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<sup>1</sup> It is also worth noting that Verizon has been providing the New York Public Service Commission with information regarding federally tariffed circuits for years in connection with the New York Special Services Guidelines.

<sup>2</sup> See, e.g., Mass. Rules of Evidence, Rule 401 ("relevant evidence" defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence"); Federal Rules of Evidence, Rule 401 (same).

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impossible to tell from these data whether the declines in service quality affect Verizon's affiliates and end-user retail customers to the same extent they affect Verizon's competitors. This presents another compelling reason in favor of permitting discovery on Verizon's Supplemental Special Access Report.)

In connection with WorldCom's own experiences with incumbent local exchange carriers in the acquisition and maintenance of special access circuits, WorldCom has developed a series of "model discovery" questions designed to ascertain whether incumbent LECs are engaging in anticompetitive and/or discriminatory conduct in providing/maintaining/repairing such circuits. Enclosed herewith for the Department's consideration is a document listing those questions (as well as appropriate definitions and instructions). The document begins with brief synopses that give context to different groupings of questions and explain the rationale for obtaining the sought after information. WorldCom believes that the Department's investigation would be aided immeasurably if it adopted the questions as its own and posed them as information requests to Verizon.

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Verizon has provided the Department with no legitimate justification as to why the admittedly relevant Supplemental Special Access Report should not be considered "evidence," and thus subject to the rigors of discovery. As such Verizon's motion should be denied. The Department's investigation of Verizon's special access performance, including discovery with respect to the Report and the accompanying outlined discovery, should proceed expeditiously.

Very truly yours,

Christopher J. McDonald

Enclosure

cc (*by email & U.S. Mail*): Service List